

STATE OF MICHIGAN
COURT OF APPEALS

ULRICH MUELLER and HANS BERNERT,

Plaintiffs-Appellees,

v

RM CLASSIC CAR PRODUCTIONS, INC.,
ROBERT MYERS, and CLARK FERGUSON,

Defendants-Appellants.

UNPUBLISHED

August 9, 2005

No. 253284

Wayne Circuit Court

LC No. 02-214203-CK

Before: Whitbeck, C.J., and Sawyer and Fitzgerald, JJ.

PER CURIAM.

Defendants RM Classic Car Productions, Inc.; RM's owner, Robert Myers; and RM employee Clark Ferguson¹ appeal by leave granted from the trial court order denying their motion for summary disposition under MCR 2.114(C)(7) in this case involving the auction of several vintage cars. We reverse. We decide this appeal without oral argument pursuant to MCR 7.214(E).

I. Basic Facts And Procedural History

RM is in the business of auctioning automobiles. Siciliano Classic Cars of America, who is not a party in this suit, is in the business of buying, restoring, and selling vintage automobiles. Mueller has purchased vintage automobiles from Siciliano since 1990.

Siciliano hired RM to auction certain vintage Cadillac Eldorado convertibles. At the auction, Mueller purchased three of the Cadillacs as an agent for Bernert. Mueller purchased an additional two Cadillacs as an agent for a different principal, but that principal backed out of the agency agreement with Mueller, and Bernert ultimately agreed to take all five Cadillacs Mueller purchased at the auction.

Although Mueller made a down payment on the five cars at the time of the auction sale, he did not pay the full price of the Cadillacs by the Monday following the auction, as the auction agreement required. Thus, at Siciliano's request, RM returned the five Cadillacs to Siciliano to await full payment. In May 1996, Bernert sent an additional payment, still leaving a balance. In June 1996, Bernert forwarded the balance for the five Cadillacs but was advised by the shipping

¹ For ease of reference, this opinion will refer to all three defendants collectively as "RM."

company that RM and Siciliano had refused the payment and did not intend to ship the cars. Apparently, Siciliano refused to release the cars because it contended that Mueller owed it money from prior unrelated consignment sales of automobiles dating back to 1990.

In July 1996, Siciliano filed an *in rem* action in Jackson Circuit Court against Mueller to recover the money from the consignment sales as well as the balance on the five cars he purchased at the auction.² Specifically, the complaint alleged breach of contract, unjust enrichment, conversion, and breach of auction contract. In October 1998, after a bench trial, the trial court concluded that Bernert was entitled to the three cars for which he had made full payment. The trial court further concluded, however, that Mueller owed Siciliano money for past debts, as well as the balance on the two Cadillacs, and that Siciliano was entitled to keep the two remaining Cadillacs until Mueller paid the full amount owed.

In April 2002, Bernert and Mueller filed the instant case in Wayne Circuit Court against the RM defendants, none of whom were parties in the Jackson Circuit Court case, alleging that they wrongfully refused to deliver the two Cadillacs despite retaining certain payments for those cars. Specifically, the complaint alleged breach of contract, fraud and misrepresentation, innocent misrepresentation, concert of action regarding fraud and misrepresentation, conversion, negligent misrepresentation, and claim and delivery.

RM filed a motion for summary disposition alleging that collateral estoppel and res judicata barred the instant case because the Jackson Circuit Court case was a final judgment on the merits. After oral argument, the trial court denied defendants' motion for summary disposition, concluding that "[n]either the parties nor the issues in our case are the same as in the Jackson County case. RM is to be distinguished from Siciliano. And Bernert is to be distinguished from Mueller."

II. Summary Disposition

A. Standards Of Review

We review de novo the trial court's decision on a motion for summary disposition³ as well as the application of preclusion doctrines.⁴

² In May 1998, while the Jackson Circuit case was pending, Bernert filed an action in federal court against Myers, RM, Ferguson, Siciliano, and the five cars, alleging breach of contract, conspiracy to defraud, conversion and interpleader. In July 1998, the federal court dismissed the action on the basis of the abstention doctrine after finding that a parallel state court action existed.

³ *Bryant v Oakpointe Villa Nursing Center*, 471 Mich 411, 419; 684 NW2d 864 (2004).

⁴ *Pierson Sand & Gravel, Inc v Keeler Brass Co*, 460 Mich 372, 379; 596 NW2d 153 (1999) (res judicata); *McMichael v McMichael*, 217 Mich App 723, 727; 552 NW2d 688 (1996) (collateral estoppel).

B. Preclusion Doctrines

RM argues that the trial court erred by denying the motion for summary disposition after concluding that res judicata and collateral estoppel did not bar plaintiffs' claims. In making a decision under MCR 2.116(C)(7), the trial court considers all documentary evidence the parties submitted, accepting the contents of the complaint as true unless affidavits or other appropriate documents specifically contradict them.⁵

First, we note that the trial court properly concluded that the doctrine of res judicata did not bar plaintiffs' claims in the instant case. Res judicata applies only where both actions involve the same parties or their privies.⁶ Here, neither Bernert nor the three RM defendants were parties in the Jackson Circuit Court case, and Mueller was a defendant. Res judicata does not bar Bernert and Mueller's claims because they did not bring any claims against the RM defendants or their privies in the Jackson Circuit Court case.

Bernert's and Mueller's claims in the instant case are barred, however, by the doctrine of collateral estoppel. Generally, collateral estoppel applies where (1) a question of fact essential to the judgment was actually litigated and determined by a valid and final judgment, (2) the same parties had a full and fair opportunity to litigate the issue, and (3) mutuality of estoppel exists.⁷ There is an exception to the mutuality of estoppel requirement, however, where collateral estoppel is asserted defensively to prevent a party from relitigating an issue that the party has already had a full and fair opportunity to litigate in the prior suit.⁸

Here, the question at issue is whether RM wrongfully refused to deliver two Cadillacs to Bernert and Mueller after an auction. This issue was actually litigated and determined by a valid and final judgment in the Jackson Circuit Court action, where the trial court ruled that Bernert and Mueller were not entitled to the two cars unless they paid the amounts owed to Siciliano's Classic Cars of America within thirty days.

Furthermore, the exception to the mutuality requirement applies because RM seeks to use collateral estoppel defensively and Bernert and Mueller had a full and fair opportunity to litigate the issue in the prior case.⁹ Mueller fully litigated the issue regarding his entitlement to the two Cadillacs in the prior case in both the trial court and on appeal. Contrary to plaintiffs' argument, the trial court's denial of Mueller's request to add new causes of action and new parties in the Jackson Circuit Court case did not prevent him from litigating the relevant issue in the prior case, that is, whether he was entitled to the cars after the auction.

Although Bernert was not a party in the prior suit, he was in privity with Mueller. Privity exists where there are "mutual or successive relationships to the same right of property, or such

⁵ *Id.*

⁶ *Sewell v Clean Cut Mgmt*, 463 Mich 569, 575; 621 NW2d 222 (2001).

⁷ *Monat v State Farm Ins Co*, 469 Mich 679, 683-684; 677 NW2d 843 (2004).

⁸ *Id.* at 691-692.

⁹ *Id.*

an identification of interest of one person with another as to represent the same legal right.”¹⁰ Although Bernert was not a party to the Jackson Circuit Court case, he had a principal/agent relationship with Mueller with respect to three of the five cars that were the subject of the Jackson Circuit Court lawsuit, and it is undisputed that Bernert had agreed to purchase the two remaining cars from Mueller. Thus, Bernert’s right to the cars was so closely related to Mueller’s that the two parties can be considered to be in privity.¹¹

Therefore, collateral estoppel bars plaintiffs from relitigating the issue whether they were entitled to the two Cadillacs after the auction. Because this issue was decided against Bernert and Mueller in the prior action and is dispositive of the claims in the instant case, the trial court erred in denying RM’s motion for summary disposition under MCR 2.116(C)(7). In light of our conclusion, we need not address RM’s remaining issues.

Reversed.

/s/ William C. Whitbeck

/s/ David H. Sawyer

/s/ E. Thomas Fitzgerald

¹⁰ *Dow Chemical Co v Curtis*, 158 Mich App 347, 354; 404 NW2d 737 (1987) (citation omitted), rev’d on other grounds 431 Mich 471; 430 NW2d 645 (1988).

¹¹ *Id.*